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U.S. Customs and
Border Protection

MEMORANDUM FOR: All Chief Patrol Agents
All Deputy Chief Patrol Agents

FROM: Raul L. Ortiz
Chief
U.S. Border Patrol

SUBJECT: Parole Plus Alternative to Detention

This memorandum supersedes previous guidance relating to prosecutorial discretion and issuance of Notices to Report (NTR), as issued in March 2021, and establishes conditions for the implementation of parole plus Alternative to Detention (Parole + ATD), a processing pathway that will replace the use of NTR unless that pathway is explicitly authorized by the U.S. Border Patrol (USBP) Chief.

USBP takes very seriously its mission of creating a secure border while ensuring the health and safety of migrants in its custody, as well as the health of the workforce. Earlier this year, when encounters were consistently high, operational capacity strained, and COVID-19 acute, USBP began issuing NTRs, a significantly faster mechanism for processing noncitizens, particularly when used for family units (FMU). NTRs were used for certain noncitizens following initial processing and collection of biometric and biographic information. The use of this processing pathway enabled USBP to relieve overcrowding in congregate settings, thus better protecting both the workforce and noncitizens in our custody. Importantly, use of an NTR decreased processing times significantly compared with processing families for a Notice to Appear (NTA), thus ensuring that families were more expeditiously moved out of U.S. Customs and Border Protection (CBP) custody. The process of issuing NTAs is much more time consuming, given the level of detail and interagency coordination required to establish A-files and finalize the charging documents. Those released with NTRs, however, were directed to report to ICE for further processing, including for an NTA, as appropriate.

Effective immediately, USBP is ceasing the use of NTRs. When noncitizens will be processed for release from USBP facilities, USBP will prioritize resources to issue noncitizens NTAs immediately. NTAs formally initiate immigration proceedings, and it is USBP's goal to maximize NTA issuance from USBP facilities and eliminate the need for use of alternative processing pathways in the future.

In circumstances where an alternate path is necessary to address urgent crowding and excessive Time-In-Custody (TIC) in USBP facilities, Border Patrol has developed an alternative processing pathway: the use of Parole + ATD. This pathway includes enrollment of FMUs in ICE ATD programs to ensure individuals are accounted for after release from USBP facilities. Parole + ATD is a rigorous enforcement process that is effective and includes accountability measures to

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require noncitizens to report to ICE for issuance of an NTA and continue through the formal immigration process.

To deal with situations in which capacity constraints or conditions in custody warrant the more expeditious processing, USBP may consider use of Parole + ATD on a case-by-case basis for FMUs when certain conditions, laid out below, exist. The use of Parole + ATD in these circumstances will ensure that the USBP can continue to meet its mission requirements, such as border security operations, by maximizing deployments of agents to the field. Use of Parole + ATD is consistent with 8 U.S.C. § 1182(d)(5), which provides that certain noncitizens may be paroled temporarily “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit”—namely, the urgent humanitarian need to protect the workforce, migrants, and American public against the spread of COVID-19 that may be exacerbated by overcrowding in CBP facilities.

All individual members of a FMU who are processed for Parole + ATD, will, as a condition of their parole, be required to report to ICE within 15 days to be processed for an NTA. Effective immediately:

In the Del Rio (DRT) and Rio Grande Valley (RGV) Sectors, Chief Patrol Agents may authorize the processing of FMUs for Parole + ATD on a case-by-case basis when the temporary staffing support to the sector is maximized, the seven-day average of encounters is greater than the sector's Fiscal Year 2019 May daily average,¹ and when one or more of the following is true:

- The average TIC in the sector exceeds 72 hours AND the number of subjects who were taken into custody in the sector during the preceding 48 hours exceeds the number of individuals booked out in the same period.
- The sector exceeds 100% of the total non-COVID detention capacity AND the number of subjects who were taken into custody in the sector during the preceding 48 hours exceeds the number of individuals booked out in the same period.

Outside of the DRT and RGV Sectors, any sector seeking to utilize the Parole + ATD pathway must obtain approval from the USBP Chief and the CBP Commissioner prior to implementation. The USBP Chief and CBP Commissioner may authorize the use of this pathway in situations in which capacity constraints or conditions in custody show that there is an urgent humanitarian reason to release FMUs in a more expeditious fashion in order to avoid crowding in CBP facilities and the resulting COVID-19 health risks to the workforce and migrants in custody, taking into account the factors identified above.

The use of Parole + ATD pathway in DRT and RGV Sectors will be reassessed by USBP HQ on a daily basis in accordance with the conditions established above.

¹ The Fiscal Year 2019 May daily average in RGV was 1,607 and in DRT was 276. This month saw the highest encounter numbers that year.

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Parole + ATD may not be used for noncitizens who pose a national security or public safety threat. Furthermore, Parole + ATD may only be issued when an individual is not covered by or is excepted from, on a case-by-case basis, the U.S. Centers for Disease Control and Prevention (CDC) Title 42 Order.

In sectors in which the use of the Parole + ATD pathway has been approved, if parole is appropriate based on a consideration of the above factors (as well as any other applicable urgent humanitarian reasons or significant public benefit considerations), USBP agents may exercise their discretion to process the noncitizen(s) with Parole + ATD, after initial enrollment processing is complete, rather than issuing an NTA.

Under no circumstances will a noncitizen who claims to be, is suspected to be, or is determined to be a noncitizen unaccompanied child as defined by 6 U.S.C. § 279(g)(2), be processed through this pathway.

As the processing landscape and the nature of the current COVID-19 pandemic remains fluid and may change over time, updated guidance will be disseminated to the field via email to reflect the latest changes. In particular, when COVID-19 conditions eventually improve, it is expected that there will no longer be a need for this alternate pathway.

Staff may direct their questions to the Immigration, Prosecutions, and Custody Operations Unit at Headquarters by emailing ImmigrationProsecution&CustodyOPS@cbp.dhs.gov.